

**Minutes of the Waukesha County Criminal Justice Collaborating Council
Executive Committee
March 15, 2010**

Judge Davis called the meeting to order at 9:09 a.m.

Committee Members Present: Judge Mac Davis (Chair), Brad Schimel, Dan Vrakas, Sam Benedict.
Absent: Jim Dwyer, Peter Schuler. (Peter Schuler participated by teleconference.)

Also Present: Vanessa Allen, Karen Phillips, Sara Carpenter, JoAnn Eiring.

Approve Minutes from January 11, 2010 Meeting

The minutes of January 11, 2010, were approved with unanimous consent.

Update on BJA/CSAT Grant Submission

Davis reviewed the handout titled *2010 Bureau of Justice Assistance (BJA)/Center for Substance Abuse Treatment (CSAT) Grant Submission Update*. The application was submitted February 11, 2010. The BJA/CSAT will announce grant awards in August/September 2010, with programming to begin October 1, 2010.

Update on Broader & Consistent Use of SCRAM for OWI Defendants on Bail

Davis stated that since the SCRAM monitoring option became available through WCS over a year ago, its usage has been increasing as the judges and court commissioners become more familiar with how the program works. After further discussion between the Judiciary and WCS staff about expanding the usage of SCRAM, criteria were developed as outlined on the handout, *A Proposal for Broader and Consistent Use of SCRAM for OWI Defendants on Bail*. Davis had presented the proposal to Schimel, Benedict and several members of the private criminal defense bar for comments and questions prior to this meeting. Commissioner Binn has since been ordering SCRAM more often using the criteria listed in the proposal. The next step would be to refer this proposal to the Pretrial Subcommittee for further review and discussion.

Davis asked Benedict and Schimel for questions or comments, as both of them had submitted lengthy written comments. Benedict pointed out that although this issue is well worth further discussion and evaluation, it appears to have gone well past the proposal stage. He said that about 75% of fast tracks of the last two Tuesdays were ordered on SCRAM. For instance, last Tuesday there were 19 OWI cases scheduled; of those, 17 appeared and 13 of them were ordered on SCRAM as a condition of their bail. Davis inquired whether those individuals met the 5-point criteria as listed on the handout. Benedict replied that was difficult to evaluate, but it seemed to be heavily based on the PBT (Preliminary Breathalyzer Test) results. Citing a specific example, one of his clients charged with an OWI third offense was ordered on SCRAM: there was no PBT (PBT was broken); blood test results were not in; he had a driver's license and was stopped for speeding when he admitted he had been drinking – there were no other aggravating factors. This individual has not had a conviction in 10 years. He has a disability, is unemployed and has no money for SCRAM. Consequently, based on the prepayment requirement, he was told he had to go on daily monitoring. Davis advised that scenario is not part of this proposal. Benedict said that it has been his observation that the ordering of SCRAM monitoring is overly broad in terms of its application.

Carpenter countered that individuals are not automatically denied SCRAM enrollment because they cannot afford to pay for it. Carpenter said she would like to review the facts of that particular case. WCS makes every effort to work out a payment plan or offer other alternatives to provide a responsible level of monitoring and support. Specifics of the case and WCS policies for SCRAM payment were further discussed. Carpenter said that Milwaukee County's SCRAM criteria are similar

to the proposal. She maintained that SCRAM has been proven to increase pretrial compliance. Carpenter said Milwaukee County has used it since 2005 with almost a 90% compliance rate.

Davis said he is totally supportive of using SCRAM whenever feasible, and wants to make sure it is used fairly. Any issues about fairness, application and cost need to be addressed. Benedict stated his concern of legal issues that have not been addressed, specifically the limits of pre-conviction bail conditions. He did voice his support for the voluntary use of SCRAM, but his clients can rarely afford it. Benedict was also concerned that there is no pre-conviction treatment/aversion program. There is very little incentive for active participation in pre-conviction treatment because the reward is so small compared to that of the Alcohol Treatment Court Program. Davis disagreed, stating that WCS' recommendation letters are very beneficial to the DA and judges at the time of sentencing. He acknowledged the importance for the Judiciary to give credit for the rehabilitation effort by the defendant. Schimel stated that with the upcoming law changes that will take effect July 1, perhaps this is a good time to look at a new approach.

After further discussion, Davis requested that Eiring schedule a Pretrial Subcommittee meeting promptly to thoroughly discuss SCRAM issues and practices. He would like to include a private bar attorney in the discussion and suggested inviting Andy Ladd and Craig Kuhary to the next meeting. Benedict asked that information about risk tools utilized by WCS be shared at the Pretrial Subcommittee meeting.

Discuss & Consider Membership Additions to the Education & Public Relations Committee

The candidates, Sarah Spaeth and Stephanie Sutton, submitted their bios for review by the Committee. Schimel added that Sutton would be a temporary replacement until Marcia Jante's successor is found.

MOTION: Schimel moved, second by Vrakas, to approve the Education & Public Relations Committee memberships of Sarah Spaeth and Stephanie Sutton. Motion carried by unanimous consent.

Discuss & Consider Referral Criteria for Pretrial Defendants to Day Report Center

Carpenter reviewed a handout titled *Criteria for the Day Report Center*. The list included the objective variables to review when considering the Day Report Center as an option for Pretrial defendants just prior to sentencing:

- Status of treatment
- Lack of positive support network
- Unemployed or under-employed clients
- Mental health diagnosis
- Non-compliance during pretrial supervision (pattern of missed office appointments, positive drug and alcohol tests, new charge, failure to appear at court hearings)
- OWI risk factors.

Davis suggested that WCS add a sentence or two at the end of their pretrial report letter as a reminder to the sentencing judge and lawyers about the Day Report Center option. WCS is most familiar with the people on Pretrial monitoring and therefore better able to make appropriate recommendations for those individuals who would be good candidates for the Day Report Center. Considering the judges rotations, it would serve as a prompt to the presiding criminal judges to consider the Day Report option at the time of sentencing. In addition, the referral criteria list provides a means to regularize and preserve usage by the Judiciary and attorneys. Davis maintained that judges' education is very important in keeping a balance of community safety and economizing resources.

Schimmel said the criteria is good, but it is very hard to put into guidelines for the DA's Office. Benedict and Schimmel agreed that according to the referral criteria, it appears that people who are most suitable for the Day Report Center are those who have the highest needs. Carpenter replied that post-conviction, those *are* the people who need the services most. Benedict was concerned that if WCS has low numbers in the Day Report Center Program, they may have a bias to make more recommendations. Eiring assured that would not be an issue. Discussion of the pros and cons of the Day Report Center referral guidelines continued at length.

In closing, Davis asked whether this issue should be deferred to another committee for further discussion. Benedict would like to see a draft of the revised WCS letter and the issue itself addressed by the Pretrial Subcommittee. Eiring agreed to agendaize this issue for the next Pretrial Subcommittee meeting. Schimmel suggested the Huber Study Committee should discuss it.

Discuss Relevance of Juvenile Justice Committee to Overall Mission of CJCC

Benedict briefly discussed the declining relevance of the Juvenile Justice Committee as a standing CJCC Committee. He has observed that the number of case filings and detention days have gone down significantly. Presently the issues are far different from those confronted in the adult criminal justice system. Statistically, the numbers show Waukesha County does not have an exploding juvenile crime problem. Right now, there is not an over-abundance of serious juvenile offenders. As Chair of the Committee, Benedict requested input and direction on how to make the Juvenile Justice Committee more relevant, or perhaps determine whether there is a need for it to continue in the future.

After further discussion, Davis stated this issue would be agendaized for review by the CJCC at the meeting of May 26, 2010. Davis said the Juvenile Justice Committee, as well as all other committees, should report to the CJCC at least once a year.

Schuler added that the Juvenile Justice Committee is of great relevance to the HHS Department and HHS Board. The specific issue most concerning is the increasing number of alcohol and drug offenses with youth. Perhaps the Juvenile Justice Committee could meet with the HHS Board for further discussion of the issues in the near future.

Discuss & Consider Establishing Term Limits for Chairs & Members of CJCC Committees, Subcommittees, & Workgroups

Davis stated his concern that CJCC committee, subcommittee and workgroup memberships have not changed over the years. He introduced the idea of setting a policy to set term limits and review appointed memberships periodically. After further discussion, there was a consensus that no action would be taken at this time.

Discuss/Reevaluate Pretrial Supervision Program's Purpose & Goal

Benedict said he thinks that the Pretrial Supervision Program's purpose and goal has changed over time and would like a reevaluation of the program and the program demands. He suggested a review of the program data and caseload to properly evaluate the components of the Pretrial Supervision Program. He said the focus of the program has shifted to serving the drug-addicted person. Due to time constraints, this issue was deferred to the next CJCC Executive Committee meeting for further discussion.

Discuss Agenda Items for 3/24 CJCC Meeting

- Presentation by Chuck Wood of the Sheriff's Department on drugs in Waukesha County (30 minutes)
- Update on DOC's Day Report Center by Karl Held

- Grant Submission Update

The next Pretrial Subcommittee meeting is scheduled for April 27; however, Eiring will email Pretrial Subcommittee members with possible earlier meeting dates.

Future Agenda Items for the CJCC Executive Committee

- Discussion of the Pretrial Supervision Program's Purpose & Goal

Next CJCC Executive Committee Meeting

- April 12, 2010 @ 8:30 a.m., Room C-179

Future Agenda Items for the 5/26 CJCC meeting:

- Discuss Relevance of Juvenile Justice Committee to Overall Mission of CJCC
- Report on the reviews done by the Programs and Alternatives Committee (including summary of program statistics, functionality, and recommendations) suggested by Peter Schuler

The meeting adjourned at 10:31 a.m.